

CHAPTER 10. CRIMINAL RULES

10.1 Applicability of Chapter

This chapter applies to all criminal proceedings.

Eff. Jan. 1, 1999.

10.2 Accusatory Pleadings

- a. Multiple Defendant Cases.** Where codefendants are charged jointly in a complaint, information or indictment, a separate file folder shall be prepared and maintained for each codefendant. The District Attorney shall present for filing a duplicate original of the accusatory pleading for each codefendant so charged, and also shall provide sufficient copies for distribution to all codefendants at the time of arraignment.
- b. Filing of Misdemeanors.** Except as ordered upon a showing of good cause, the complaint shall be presented to the clerk for filing not later than (i) 3:00 p.m. on the day before the defendant's first appearance, if the defendant is in custody; or (ii) 3:00 p.m. of the second calendar day preceding the date of first appearance, if the defendant is not in custody. The district attorney shall provide a copy of the complaint for distribution to the defendant at the time of arraignment.
- c. Filing of Felonies.** Except as ordered upon a showing of good cause, the information or indictment shall be presented to the clerk for filing not later than 12:00 noon on the day before defendant's first appearance for arraignment on the Information.

Eff. Jan. 1, 1999.

10.3 Arraignment

- a. Procedure.** The arraignment, whether on a complaint or an information, shall be completed and a plea entered on the first day that the arraignment is on calendar, unless the court orders otherwise. When the case is called for arraignment counsel for the defendant shall announce whether or not the defendant waives a reading of the accusatory pleading and waives advisement of legal rights.

At the time of the first arraignment the district attorney shall make available to the defense counsel and to the court a copy of the police report unless it has already been so provided. The arraignment shall be completed and a plea entered on the first day that the arraignment is on calendar, unless the court orders otherwise.

- b. Reservation of rights.** Entry of a plea to either a complaint or an information shall not be deemed a waiver of the right to demur or to make any other prehearing or pretrial motions. It is the desire of the court to obtain the defendant's plea at the earliest time and to defer other pretrial matters until after the arraignment.

Eff. Jan. 1, 1999.

10.4 Motions to Suppress Evidence

- a.** Where the defendant is charged only with misdemeanors, the motion to suppress evidence shall be made and heard before trial at a special hearing. Penal Code section 1538.5(g). The notice of motion shall be in writing and shall be accompanied by points and authorities. Unless otherwise ordered or specifically provided by law, the motion shall be served and filed at least ten (10) calendar days before the hearing; all papers opposing the motion shall be filed at least five (5) calendar days before the hearing; and, all reply papers shall be filed at least two (2) court days before the hearing.
- b. Preliminary Hearing.** A suppression motion made at a preliminary hearing shall be made in compliance with Penal Code section 1538.5(f).
- c. Post Preliminary Hearing.** A motion made after the preliminary hearing shall be made in compliance with Penal Code section 1538.5(i).

All motions to suppress evidence pursuant to Penal Code Section 1538.5, and all motions to dismiss pursuant to Penal Code Section 995 shall be calendared no later than five court days before trial.

Eff. Jan. 1, 1999. As amended, eff. Jan. 1, 2003

10.5 Discovery

Discovery in criminal actions is reciprocal in nature and is governed by Penal Code sections 1054 through 1054.7. There shall be a standing order in each criminal action requiring all parties and their attorneys to comply with Penal Code sections 1054-1054.7. The order is deemed to have been made and communicated to all counsel at the time of arraignment. Before a party may seek court enforcement of any of the disclosures required by law, the party shall make an informal request of opposing counsel for the desired materials and information in the manner required by Penal Code section 1054.5(b). Failure to make such

request shall be grounds for denial of a discovery motion. Informal requests should be presented to opposing counsel in writing.

Motions for discovery shall be focused upon specific items which remain in dispute after presentation of informal requests. "Boilerplate" discovery motions are disfavored. Counsel shall meet and confer before the hearing of any discovery motion in a good faith effort to resolve or narrow the disputed issues.

Eff. Jan. 1, 1999.

10.6 Transcripts of Taped Statements

The proponent of any sound recording or taped statement shall cause accurate transcription of the recording to be made in a typewritten format. Any transcription shall be lodged with the court and served upon opposing counsel before the commencement of trial in accordance with statutory discovery procedure.

Eff. Jan. 1, 1999.

10.7 Pre-Preliminary Hearing Conference

For all felony charges a pre-preliminary hearing conference date shall be set. At the conference all counsel who will participate in the preliminary hearing shall be present. Counsel are expected to have discussed the case among themselves and exchanged offers with a view toward resolving the matter prior to preliminary hearing. Should the case not settle at the pre-preliminary hearing conference, the prosecution shall provide the court with the name of the attorney who will conduct the preliminary hearing on behalf of the people and shall provide a reliable time estimate.

Both counsel for the people and for the defendant shall inform the court of any special needs, such as interpreters or appointment of counsel for witnesses, that are needed for the preliminary hearing.

Eff. Jan. 1, 1999.

10.8 Preliminary Hearing

At the discretion of the court, and as permitted by law, the preliminary hearing shall also constitute a violation of probation hearing for any trailing probation matter.

Eff. Jan. 1, 1999.

10.9 Trial Setting

- a. Misdemeanor.** After a meaningful attempt is made to resolve the case at arraignment trial dates shall be set within the statutory time limits unless time is waived. If time is waived counsel are encouraged to discuss mutually acceptable trial dates.
- b. Felony.** Upon entry of the defendant's plea, the court shall set dates for trial and pretrial conference. The trial shall be set within 60 (sixty) days from the filing of the information unless the court lengthens the time on a showing of good cause as prescribed in Penal Code section 1050, or upon a time waiver personally entered by the defendant and with the concurrence of the prosecution.

Unless otherwise ordered, all pretrial motions shall be noticed in writing with a date obtained from the court clerk. Counsel shall provide the clerk with a description of, and a reliable time estimate for, any anticipated motions. All papers pertaining to motions shall be served and filed in compliance with CRC rule 227.5.

Eff. Jan. 1, 1999.

10.10 Pretrial Conference

At the time the defendant's not guilty plea is entered, the case shall be set for pretrial conference at the discretion of the court. Normally, pretrial conferences are set two weeks before the trial date, and if not settled on that date, are continued one week for further pretrial and readiness conference.

Before the conference, counsel shall confer among themselves, their clients and any alleged victims or law enforcement personnel in a good faith effort to achieve resolution of the case without trial.

At that conference counsel for the people and for the defendant will be expected to advise the court either that (a) the defendant desires to change his/her plea to one that is acceptable to the people, or that (b) there is no possibility of a disposition of the case without trial.

The conference will be attended by those lawyers who will try the case. If the case does not settle, counsel shall inform the court of the time estimate for trial and any special requirements that would affect the conduct of the trial.

Eff. Jan. 1, 1999.

10.11 Trial Conduct

The conduct of the trial shall be left to the discretion of the trial judge. However, counsel will be required to comply with standard courtroom protocol and dress appropriately.

As in any hearing counsel should not interrupt opposing counsel except to lodge an appropriate objection. All objections and comments must be addressed to the court, and not to opposing counsel. Permission must be sought to approach any witness on the stand. Counsel will refrain from making derogatory remarks about opposing counsel, and will otherwise be expected to handle himself/herself in a professional manner at all times.

Trial counsel shall give the trial precedence over other pending matters in other courts.

Use of the in limine conference prior to jury selection shall not be used as a further pretrial conference, except that pleas may be taken during said hearing on dispositions already negotiated between the parties.

Eff. Jan. 1, 1999.

10.12 Sentencing

When a case is called for sentencing, defense counsel shall announce whether (a) defendant has received the probation report in a timely fashion; (b) defendant waives arraignment for sentence; and (c) there is any legal reason why judgment should not be pronounced.

Absent a showing of good cause, the court will not consider letters or other written submission which are not served on opposing counsel and lodged with the sentencing judge's courtroom clerk by 3:00 p.m. on the day before the hearing.

A defendant should expect to be remanded to the custody at the time set for sentencing where (a) defendant has failed to make or keep an appointment to be interviewed by the probation officer; or (b) the court imposes a prison sentence.

Eff. Jan. 1, 1999.

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